**Jambo Credit Limited v Mwangi (Civil Appeal E340 of 2023)**
**[2025] KEHC 656 (KLR) (Civ) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 656 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E340 OF 2023**

**LP KASSAN, J**

**JANUARY 30, 2025**

**BETWEEN**

**JAMBO CREDIT LIMITED ..... APPELLANT**

**AND**

**ELIAS KARANJA MWANGI ..... RESPONDENT**

***(Being an appeal from the judgment of J. Omollo (Adjudicator) (SRM) Small Claims Court delivered on 3rd April, 2023 in Nairobi Milimani SCCC No. E8051 of 2022)***

## JUDGMENT

1. This appeal emanates from the judgment delivered on 03.04.2023 in Nairobi Milimani SCCC No. E8051 of 2022 (hereafter the lower Court claim). The claim was filed by Jambo Credit Ltd, the claimants before the lower court (hereinafter the Appellant) as against Elias Karanja Mwangi (hereinafter the Respondent), the respondent before the lower Court seeking judgment in the in the sum of Kshs. 980,000/- and costs of the claim. It was averred that on or about 21.06.2022, the Respondent voluntarily approached the Appellant and entered into a loan agreement for Kshs. 500,000/- to be repaid in equal instalments within a period of twenty-four (24) months together with interest of Kshs. 480,000/-. That despite the lapse of the payment period or demand, the Respondent blatantly failed, refused and or neglected to repay the full amount of the loan advanced to him together with interest and not remains indebted to the Appellant to the tune of Kshs. 980,000/-.

2. Despite service the Respondent neglected and or failed to enter appearance to which the Court directed that the claim proceed for hearing undefended as against the Respondent with an order that the Appellant file documents and submission in support of the claim.

3. In its judgment, the trial Court found in favour of the Appellant and proceeded to entered judgment as against the Respondent to the tune of Kshs. 500,000/- with interest on the sum at Court's rate from 23.06.2022 until payment full.

4. Aggrieved with the outcome, the Appellant preferred this appeal challenging the whole judgment based on the following grounds; -

> " 1. That the Learned Adjudicator erred gravely in fact and in law by erroneously exercising her discretion in making a finding that the Appellant had not proved its case on a balance of probabilities.
>
> 2. That the Learned Adjudicator erred gravely in fact and in law by erroneously exercising her discretion in making a finding that the Appellant was not entitled to the interest sought of Kes. 480,000.
>
> 3. That the Learned Adjudicator erred in law and fact by not properly analyzing the evidence placed before the court in particular the Loan agreement between the parties and Customer Account Statement and thereby arriving at the wrong determination.
>
> 4. That the learned Adjudicator erred in law and fact by failing to appreciate that the Respondent agreed to pay the Kes. 480,000 being the interest accruing for the loan period of 24 months.
>
> 5. That the Learned Adjudicator erred in fact and in law by disregarding the hallowed legal maxim that it is not in the business of courts to rewrite contracts between parties but that parties are bound by their contracts by failing to award the appellant the agreed interest amount between itself and the Respondent.
>
> 6. That the learned trial Adjudicator erred in law and in fact by failing to appreciate the Claimant's submissions and the fact that parties freely consented to the terms of the agreement." (sic)

5. The appeal was canvassed by way of written submissions of which this Court has duly considered alongside the memorandum of appeal and the record of appeal. This is a first appeal, specifically from the Small Claims Court. This Court has repletely observed and must iterate that the Small Claims Court is a specialized Court on accord of legislation that establishes the said Court. That said, Section 38 of the *Small Claims Court Act* prescribes the nature of appeals that lie from the Small Claims Court to the High Court by providing that; -

> " (1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.
>
> (2) An appeal from any decision or order referred to in subsection (1) shall be final."

6. Ordinarily on a first appeal, the appellate Court ought not to interfere with a finding of fact made by a trial Court unless such finding was based on no evidence, or if it is demonstrated that the Court below acted on wrong principles in arriving at the finding it did. See Ephantus Mwangi & Another vs Duncan Mwangi Wambugu (1982 – 1988) 1 KAR 278. Nonetheless, by dint of Section 38 of the

*Small Claims Court Act* this is no ordinary first appeal and this Court must first satisfy itself that the appeal before it satisfies the prescription in Section 38 of the Act.

7. The Court of Appeal in Kenya Breweries Ltd v Godfrey Odoyo [2010] eKLR, discussed its mandate on a second appeal, that is, on points of law only. Equally, in this appeal, albeit being a first appeal, the *Small Claims Court Act* prescribes that an appeal to this Court from the Small Claims Court be on matters of law only. In the foregoing case, the Court of Appeal made a distinction between matters of law vis-à-vis maters of fact by stating that: -

> "I have anxiously considered the pleadings, the evidence on record, the judgment of the learned Senior Resident Magistrate and the judgment of the superior court, the grounds of appeal, the submissions of the learned counsel as well as the authorities to which we were referred. First, this is a second appeal. In a first appeal the appellate court is by law enjoined to revisit the evidence that was before the trial court and analyse it, evaluate it and come to its own independent conclusion. In other words, a first appeal is by way of a retrial and facts must be revisited and analysed a fresh, - see Selle and Another vs. Associated Motor Boat Company Ltd and Others (1968) EA 123. In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse."

8. Black's Law Dictionary defines the two concepts as follows; -

> "Matter of fact as: A matter involving a judicial inquiry into the truth of alleged facts and Matter of law: A matter involving a judicial inquiry into the applicable law."

9. The Court of Appeal in its subsequent decision in Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others [2014] eKLR, in addressing the question whether the memorandum of appeal, though on a second appeal, raised factual issues, recognized that an appellate Court when faced with a situation where a memorandum of appeal raises factual issues it is at liberty to strike out the offending ground(s) while retaining those that are compliant.

10. Notably, counsel for the Appellant in all the grounds in the Appellant's memorandum of appeal specifically pleaded that the lower Court erred in fact and or applied the use the trouble-inviting pair of words, so to speak, "law and fact" in the face of a plain and straight-forward statutory exclusion of matters of fact pursuant to Section 38 of the *Small Claims Court Act*. A purposeful examination of the grounds undoubtedly reveals the Appellant's intent. The issues raised challenge the lower Court's inferences and decision on facts and not exclusively on the "law". It is trite that parties are bound by their pleadings and a review of all the grounds of appeal tenaciously invites the Court to interrogate factual and evidentiary material, canvassed or otherwise, before the lower Court.

11. Therefore, applying the dicta in Bashir Haji Abdullahi (supra), which this Court takes due cognizance was an appeal arising from an election dispute, to the grounds of appeal in the instant matter, the same would appear to exemplify "an attempt at legal ingenuity to dress-up and camouflage purely factual issues with the borrowed garb of "legalness" in a bid to escape the strictures of Section 38 (1) of the *Small Claims Court Act*. Nevertheless, a perfunctory review of the impugned judgment by the lower Court, the trial Court in part observed that: -

> "The Court has considered the evidence tendered and submissions filed. The issue for determination is whther or not the claim has been proved on a balance of probabilities.

Section 107 of the *Evidence Act* provides that....

The claimant has availed in evidence loan agreement which is signed by the Respondent showing that the loan which was advanced was Kshs.500,000/=. The claimant also produced a loan statement showing the loan arrears. Since the claim is uncontroverted, I find that the claimant has been able to prove that it advanced Kshs. 500,000/= to the Respondent.

The claimant also prays for interest of Kshs. 480,000/=.....However, the loan agreement is silent on the interest rate charged therefore there is no basis for the Kshs. 480,000/= which is on the loan statement.

In this case the agreement does not stipulate the agreed interest rate. However, being a loan agreement, agreement to pay interest can be implied from the course of dealing between the parties as the claimants is a lending institution. Therefore, the Court awards interest at Court rates from 23rd June, 2022 being the date of the loan agreement until payment in full" (sic)

12. From the above excerpts, it is ostensible that the learned Magistrates' determination was arrived at upon analysis of the evidentiary or factual material and submissions presented before her in respect of the monies purportedly owed and interest accruing on the loaned amount. Questions similarly canvassed in the Appellant's memorandum of appeal and submissions before this Court. As earlier stated, the Appellant is covertly inviting this Court to re-evaluate the trial evidence, contrary to the provisions of Section 38 of the *Small Claims Court Act* and consequently to make an alternate finding on the facts presented before the trial Court. As held in Bashir Haji Abdullahi (supra) an appellate Court faced with a situation of this kind is at liberty to strike out any grounds of appeal that offend the above provision, while retaining those that are compliant. In this case, having conscientiously reviewed each of the Appellant's grounds of appeal, the Court is constrained to strike out every ground for the tacit invitation contained therein entreating this Court to address factual issues.

13. However, before I pen off, this Court particularly iterates that the issue before the trial Court and on appeal rested on the question of interest. As rightly, argued by the Appellant, the role this Court plays in adjudicating over a dispute between contracting parties was well settled in the oft-cited decision of National Bank of Kenya Ltd vs Pipeplastic Samkolit (K) Ltd & Another [2001] eKLR, a consequence of which this Court does not intend to re-invent the wheel. That said, it must be remember that it is the executed contract between the contracting parties that sets out their respective rights and obligations. In the instant matter, the same was set out in loan application form dated 21.06.2022, of which attached to it were "General terms and conditions declaration". Captured therein was "Interest Rate" which despite capturing a clause on the issue it did not delineate the specific rate of interest between the contracting parties. It therefore follows that as per the Account statement dated 23.06.2022, that captured interest at Kshs. 480,000/-, there was no justification and or extrapolation as to how the figure was arrived at going by the general terms and conditions in the loan application form meanwhile noting that the statement of account was generated two (2) days after the loan agreement was purportedly executed. Such whimsical approach to interest by lenders would certainly be prejudicial to borrowers wherein a lender blatantly avoids to specify the rate of interest. The same of which must be found upon notwithstanding the free will of contracting parties.

14. That said, earlier observed the Appellant's grounds of appeal are offensive in one way or another, and the appeal is therefore incompetent. Consequently, the Court ought to strike out the memorandum of appeal herein in its entirety with no order as to costs.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JANUARY 2025.**

**HON. L. KASSAN**

**JUDGE**

In the presence of:

Muthaara holding brief Kiragu for the Appellant

No appearance for Respondent

Guyo - Court Assistant